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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 JOHN GREYSTOKE,

11 Plaintiff,

12 v.

13 CLALLAM COUNTY CORRECTIONS
14 FACILITY, JAMES VICE, ARTHUR
TORDINI,

15 Defendants.

CASE NO. 3:17-CV-05272-RJB-DWC

ORDER TO SHOW CAUSE OR
AMEND COMPLAINT

16 Plaintiff John Greystoke, proceeding *pro se* and *in forma pauperis*, filed this civil rights
17 complaint under 42 U.S.C. § 1983. Having reviewed and screened Plaintiff's Amended
18 Complaint under 28 U.S.C. § 1915A, the Court declines to serve the Amended Complaint but
19 provides Plaintiff leave to file an amended pleading by June 16, 2017, to cure the deficiencies
20 identified herein.

21 **BACKGROUND**

22 Plaintiff, who is housed at Clallam County Corrections Facility ("Corrections Facility"),
23 alleges his constitutional rights were violated when he was (1) sexually assaulted by Defendant
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1 James Vice; (2) forced to live in inhumane conditions of confinement; and (3) denied adequate
2 medical care by Defendant Arthur Tordini. Dkt. 16.^{1, 2}

3 DISCUSSION

4 Under the Prison Litigation Reform Act of 1995, the Court is required to screen
5 complaints brought by prisoners seeking relief against a governmental entity or officer or
6 employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must “dismiss the
7 complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to
8 state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant
9 who is immune from such relief.” *Id.* at (b); 28 U.S.C. § 1915(e)(2); *see Barren v. Harrington*,
10 152 F.3d 1193 (9th Cir. 1998).

11 In order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show: (1) he
12 suffered a violation of rights protected by the Constitution or created by federal statute, and (2)
13 the violation was proximately caused by a person acting under color of state law. *See Crumpton*
14 *v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The first step in a § 1983 claim is therefore to
15 identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271
16 (1994). To satisfy the second prong, a plaintiff must allege facts showing how individually
17 named defendants caused, or personally participated in causing, the harm alleged in the
18 complaint. *See Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).

21 ¹ On April 26, 2017, the Court screened Plaintiff’s Complaint and found it was deficient. *See* Dkt. 10. The
22 Court ordered Plaintiff to correct the deficiencies by May 26, 2017. *Id.* Plaintiff filed the Amended Complaint on
May 5, 2017. Dkt. 16.

23 ² The Court notes Plaintiff also attached a letter to the Amended Complaint which responded to the Court’s
24 previous Order to Show Cause or Amend Complaint. *See* Dkt. 16-1. It is unclear if Plaintiff is attempting to add
claims or facts to the Amended Complaint in this letter. The Court, however, will only consider those Defendants
and claims which are clearly articulated in the amended complaint.

1 Plaintiff's Amended Complaint suffers from deficiencies requiring dismissal if not
2 corrected in an amended complaint.

3 **I. Statute of Limitations**

4 In his Amended Complaint, Plaintiff alleges he was sexually assaulted by Defendant Vice
5 in 1991. Dkt. 16. Plaintiff was directed to show cause why this claim should not be dismissed as
6 barred by the statute of limitations. *See* Dkt. 10. Plaintiff filed a response regarding statutory
7 rape, not the statute of limitations. *See* Dkt. 16-1. The Court therefore provides Plaintiff with a
8 second opportunity to show cause why this claim is untimely.

9 A complaint must be timely filed. The Civil Rights Act, 42 U.S.C. § 1983, contains no
10 statute of limitations. "Thus, the federal courts [] apply the applicable period of limitations under
11 state law for the jurisdiction in which the claim arose." *Rose v. Rinaldi*, 654 F.2d 546, 547 (9th
12 Cir. 1981). In *Rose*, the Ninth Circuit determined the three year limitations period identified in
13 Revised Code of Washington 4.16.080(2) is the applicable statute of limitations for § 1983 cases
14 in Washington. 654 F.2d at 547; *see* R.C.W. § 4.16.080(2).

15 The Court also applies the forum state's law regarding equitable tolling for actions
16 arising under § 1983. *Jones v. Blanas*, 393 F.3d 918, 927 (9th Cir. 2004). In Washington, courts
17 permit equitable tolling "when justice requires." *Millay v. Cam*, 135 Wash.2d 193, 206 (1998).
18 "The predicates for equitable tolling are bad faith, deception, or false assurances by the
19 defendant and the exercise of diligence by the plaintiff." *Id.* Courts "typically permit equitable
20 tolling to occur only sparingly, and should not extend it to a garden variety claim of excusable
21 neglect." *State v. Robinson*, 104 Wash.App. 657, 667 (2001) (internal quotations omitted).
22 Washington State also allows for a tolling period when a person is imprisoned on a criminal
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1 charge prior to sentencing. *See* R.C.W. § 4.16.190; *see also Williams v. Holevinski*, 2006 WL
2 216705, *2 (E.D. Wash. July 31, 2006).

3 Although the statute of limitations is an affirmative defense which normally may not be
4 raised by the Court *sua sponte*, it may be grounds for *sua sponte* dismissal of an *in forma*
5 *pauperis* complaint where the defense is complete and obvious from the face of the pleadings or
6 the Court's own records. *See Franklin v. Murphy*, 745 F.2d 1221, 1228–30 (9th Cir. 1984).

7 From the allegations contained in the Complaint, Plaintiff had actual notice of the facts
8 related to the claim alleged against Defendant Vice on March 31, 1991. *See* Dkt. 16, p. 3; *Kimes*
9 *v. Stone*, 84 F.3d 1121, 1128 (9th Cir. 1996) (a claim accrues when the plaintiff knows or has
10 reason to know of the injury which is the basis of the action). The time for filing a complaint as
11 to this claim expired three years later, on March 31, 1994. Plaintiff initiated this lawsuit on April
12 8, 2017, approximately 23 years after the statute of limitations expired. *See* Dkt. 1. Plaintiff has
13 not shown statutory or equitable tolling is applicable in this case. *See* Dkt. 8. Therefore, Plaintiff
14 must show cause why the claim against Defendant Vice should not be dismissed because it is
15 untimely.

16 II. Conditions of Confinement

17 In the Complaint, Plaintiff alleges he was forced to live in inhumane conditions. Dkt. 16,
18 p. 3.³ The Constitution does not mandate comfortable prisons, but neither does it permit inhumane
19 prisons. *Farmer v. Brennan*, 511 U.S. 825, 832 (1970). Under the Eighth Amendment, prison

21 ³ While it is unclear from the Complaint, it appears Plaintiff is a pretrial detainee. *See* Dkt. 8. Regardless of
22 whether he is a pretrial detainee or serving a sentence, the Eighth Amendment standards apply. *See Bell v. Wolfish*,
23 441 U.S. 520, 535 n. 16 (1979) (conditions of confinement imposed on a pretrial detainee are governed by the
24 Fourteenth Amendment Due Process Clause); *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998) (“Because
pretrial detainees’ rights under the Fourteenth Amendment are comparable to prisoners’ rights under the Eighth
Amendment, however, we apply the same standards.”).

1 officials are required to provide prisoners with basic life necessities, such as food, clothing, shelter,
2 sanitation, medical care, and personal safety. *Id.*; *Toussaint v. McCarthy*, 801 F.3d 1080, 1107 (9th
3 Cir. 1986). To state a claim for unconstitutional conditions of confinement, a plaintiff must allege a
4 defendant's acts or omissions deprived the inmate of "the minimal civilized measure of life's
5 necessities" and the defendant acted with deliberate indifference to an excessive risk to inmate
6 health or safety. *Allen v. Sakai*, 48 F.3d 1082, 1087 (9th Cir. 1994) (quoting *Farmer*, 511 U.S. at
7 834); see *Estate of Ford v. Ramirez—Palmer*, 301 F.3d 1043, 1049–50 (9th Cir. 2002).

8 "To violate the Cruel and Unusual Punishments Clause, a prison official must have a
9 sufficiently culpable state of mind." *Farmer*, 511 U.S. at 834 (internal quotations omitted). "In
10 prison-conditions cases th[e] state of mind is one of 'deliberate indifference' to inmate health or
11 safety[.]" *Id.* (citing *Wilson v. Seiter*, 501 U.S. 294, 302-03 (1991)). A prison official does not act
12 with deliberate indifference "unless the official knows of and disregards an excessive risk to
13 inmate health or safety." *Farmer*, 511 U.S. at 837.

14 Plaintiff states the conditions at the Corrections Facility violate basic human rights. See
15 Dkt. 16. Plaintiff states the following conditions violate his rights: sleeping on the floor, lack of
16 safety, risk of injury during earthquakes, constant lighting, defective plumbing, deprivation of
17 basic sanitation, excessive cold, toxic noxious fumes, inadequate ventilation, lack of potable water,
18 exposure to extreme behavior of severely mentally ill persons, sleep deprivation, excessive noise,
19 exposure to sewage, and inadequate food service. *Id.* at p. 3. He also appears to allege a lack of
20 general mental health care. See *id.*

21 To state a claim under 42 U.S.C. § 1983, Plaintiff must allege facts showing how a
22 defendant caused or personally participated in causing the harm alleged in the complaint. *Leer v.*
23 *Murphy*, 844 F.2d 628, 633 (9th Cir. 1988); *Arnold*, 637 F.2d at 1355. A person subjects another
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1 to a deprivation of a constitutional right when committing an affirmative act, participating in
2 another's affirmative act, or omitting to perform an act which is legally required. *Johnson v.*
3 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). Plaintiff's Amended Complaint fails to identify any
4 Defendant who personally participated in the alleged constitutional violation. *See Jones v.*
5 *Community Development Agency*, 733 F.2d 646, 649 (9th Cir. 1984) (vague and mere conclusory
6 allegations unsupported by facts are not sufficient to state section 1983 claims). Therefore, if
7 Plaintiff wishes to pursue a claim regarding the conditions of confinement at the Corrections
8 Facility, he must provide a short, plain statement explaining *exactly* what each Defendant did or
9 failed to do and how the actions violated Plaintiff's constitutional rights and caused him harm.
10 General statements alleging the conditions violate his rights are insufficient to state a claim and
11 will not survive §1915A screening.

12 **III. Serious Medical Need**

13 Plaintiff also alleges Defendant Tordini acted with deliberate indifference to Plaintiff's
14 request for treatment for his syphilis and diabetes. Dkt. 16. Deliberate indifference to serious
15 medical needs of prisoners constitutes the unnecessary and wanton infliction of pain." *Estelle v.*
16 *Gamble*, 429 U.S. 97, 104 (1976) (internal citation omitted); *see Hudson v. McMillan*, 503 U.S.
17 1, 6 (1992). An Eighth Amendment medical claim has two elements: (1) "the seriousness of the
18 prisoner's medical need and [(2)] the nature of the defendant's response to that need." *McGuckin*
19 *v. Smith*, 974 F.2d 1050, 1059 (9th Cir.1991), *overruled on other grounds by WMX Techs., Inc.*
20 *v. Miller*, 104 F.3d 1133 (9th Cir.1997) (en banc).

21 A medical need is serious "if the failure to treat the prisoner's condition could result in
22 further significant injury or the 'unnecessary and wanton infliction of pain.'" *McGuckin*, 974
23 F.2d at 1059 (*quoting Estelle*, 429 U.S. at 104). "The existence of an injury that a reasonable
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1 doctor or patient would find important and worthy of comment or treatment; the presence of a
2 medical condition that significantly affects an individual's daily activities; or the existence of
3 chronic and substantial pain are examples of indications that a prisoner has a 'serious' need for
4 medical treatment." *Id.* at 1059-1060.

5 If a plaintiff shows he suffered from a serious medical need, he must then show the
6 prison officials responded to the need with deliberate indifference. *See Farmer*, 511 U.S. at 834.
7 Deliberate indifference to a prisoner's serious medical need requires "a purposeful act or failure
8 to act on the part of the defendant." *McGuckin*, 974 F.2d at 1060. In other words, "[a] defendant
9 must purposefully ignore or fail to respond to a prisoner's pain or possible medical need." *Id.* A
10 prison official, accordingly, will not be found deliberately indifferent to a prisoner's serious
11 medical needs "unless the official knows of and disregards an excessive risk to inmate health or
12 safety." *Farmer*, 511 U.S. at 837. "[T]he official must both be aware of facts from which the
13 inference could be drawn that a substantial risk of serious harm exists, and he must also draw the
14 inference." *Id.*

15 Plaintiff alleges Defendant Tordini has repeatedly denied Plaintiff treatment for syphilis
16 and diabetes. Dkt. 16, p. 3. He also states Defendant Tordini provided inappropriate care when
17 he was examining Plaintiff and placed something other than his finger in Plaintiff's anal cavity.
18 *Id.*

19 First, Plaintiff has not alleged facts sufficient to show Defendant Tordini was aware
20 Plaintiff was suffering from syphilis and diabetes. As Plaintiff has not alleged Defendant Tordini
21 had knowledge of Plaintiff's serious medical needs, he has not alleged facts sufficient to show
22 Defendant Tordini acted with deliberate indifference to Plaintiff's serious medical needs.

23 Second, Plaintiff has failed to allege facts sufficient to show Defendant Tordini's
24 examination of Plaintiff violated Plaintiff's constitutional rights. Plaintiff has not provided any

1 information about why Defendant Tordini was examining Plaintiff's anal cavity. Further, he does
2 not explain how Defendant Tordini's actions resulted in a constitutional violation. It appears
3 Plaintiff merely disagrees with Defendant Tordini's course of treatment, which is insufficient to
4 state a §1983 claim. *See Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th Cir. 2004) (finding mere
5 differences of opinion between a prisoner and prison medical staff or between medical
6 professionals regarding the proper course of treatment does not give rise to a § 1983 claim);
7 *Hutchinson v. U.S.*, 838 F.2d 390, 394 (9th Cir. 1988) ("[m]ere negligence in diagnosing or
8 treating a medical condition, without more, does not violate a prisoner's Eighth Amendment
9 rights.").

10 For the above stated reasons, the Court finds Plaintiff has failed to state a claim upon
11 which relief can be granted as to Defendant Tordini. If Plaintiff wishes to pursue a claim against
12 Defendant Tordini for deliberate indifference to a serious medical need, he must provide a short,
13 plain statement explaining *exactly* what Defendant Tordini did or failed to do and how the
14 actions violated Plaintiff's constitutional rights and caused him harm.

15 **IV. Improper Defendant**

16 Plaintiff names the Corrections Facility as a Defendant in this action. Dkt. 16, p. 1. The
17 Court notes the Corrections Facility is not a legal entity capable of being sued under § 1983.
18 Rather, Clallam County, a municipality, would be the proper defendant. *See Monell v. New York*
19 *City Dept. of Social Services*, 436 U.S. 658, 690, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978); *Nolan v.*
20 *Snohomish County*, 59 Wash.App. 876, 882 (1990); *Patu v. Pierce County Jail*, 2015 WL
21 3949355, *3 (W.D. Wash. June 29, 2015). To set forth a claim against a municipality, a plaintiff
22 must show the defendant's employees or agents acted through an official custom, pattern, or
23 policy permitting deliberate indifference to, or violating, the plaintiff's civil rights, or that the
24 entity ratified the unlawful conduct. *Id.* at 690-91. A plaintiff must show (1) deprivation of a

1 constitutional right; (2) the municipality has a policy; (3) the policy amounts to deliberate
2 indifference to a plaintiff's constitutional rights; and (4) the policy is the moving force behind
3 the constitutional violation. *See Oviatt v. Pearce*, 954 F.3d 1470, 1474 (9th Cir. 1992).

4 Plaintiff has not named Clallam County as a defendant or alleged facts against Clallam
5 County showing it is liable. For example, Plaintiff does not identify a policy, custom, or pattern
6 implemented by Clallam County which resulted in the deprivation of his constitutional rights. If
7 Plaintiff seeks to sue Clallam County, he must allege facts sufficient to meet the required
8 elements of a claim against a municipality and show Clallam County violated his constitutional
9 rights.

10 **V. Instruction to Plaintiff and the Clerk**

11 If Plaintiff intends to pursue a § 1983 civil rights action in this Court, he must file an
12 amended complaint and within the amended complaint, he must write a short, plain statement
13 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name of the
14 person who violated the right; (3) exactly what the individual did or failed to do; (4) how the
15 action or inaction of the individual is connected to the violation of Plaintiff's constitutional
16 rights; and (5) what specific injury Plaintiff suffered because of the individual's conduct. *See*
17 *Rizzo v. Goode*, 423 U.S. 362, 371–72, 377, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976). If Plaintiff
18 intends to pursue any claim which occurred prior to April 8, 2014, he must show tolling is
19 warranted.

20 Plaintiff shall present the amended complaint on the form provided by the Court. The
21 amended complaint must be legibly rewritten or retyped in its entirety, it should be an original
22 and not a copy, it should contain the same case number, and it may not incorporate any part of
23 the original complaint by reference. The amended complaint will act as a complete substitute for
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1 the original Complaint, and not as a supplement. The Court will screen the amended complaint to
2 determine whether it contains factual allegations linking each defendant to the alleged violations
3 of Plaintiff's rights. The Court will not authorize service of the amended complaint on any
4 defendant who is not specifically linked to a violation of Plaintiff's rights.

5 **Plaintiff's Amended Complaint is nearly illegible. The Court instructs Plaintiff to**
6 **write as neatly as possible and to ensure the copies sent to the Court are legible.**

7 If Plaintiff fails to file an amended complaint or fails to adequately address the issues
8 raised herein on or before June 16, 2017, the undersigned will recommend dismissal of this
9 action as frivolous pursuant to 28 U.S.C. § 1915.

10 The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C. § 1983
11 civil rights complaint and for service. The Clerk is further directed to send copies of this Order
12 and Pro Se Instruction Sheet to Plaintiff.

13 Dated this 15th day of May, 2017.

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16 David W. Christel
17 United States Magistrate Judge
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